

Appl. No. 10/822,372
Amdt. dated January 11, 2006
Reply to Office action of October 11, 2005

Remarks/Arguments

All original claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hargett in view of secondary references. Reconsideration and withdrawal of the rejections is respectfully requested in view of the above amendments and for the following reasons.

The present invention is directed to a concrete pad having drainage holes so that water can drain from the upper surface of the pad to escape into the soil beneath the pad. See applicant's specification at P. 3, ll. 1516; P. 5, ll. 14-15; P. 7, ll. 3-4; and P. 8, ll. 18-19. The concrete pad drainage holes are formed by a plurality of vertically aligned conduits having lengths equal to the thickness of the pad with the upper ends of the conduits being in a plane with the upper surface of the pad so that water flows from the upper surface through the conduits and escapes beneath the pad. The claims now specifically define the concrete form containing the conduits that are used to form this pad, the pad itself, and the method of making the pad.

The Hargett patent describes a drainage system for the rapid removal of water from airport runways. The drainage system is located in the central portion of a concrete slab (Col. 1, ll. 22-23) and collects water for discharge into conventional storm drains outside of the pavement structure (Col. 1, ll. 31-33). The drainage system is recessed into the body of the pavement (Col. 2, ll. 10-11). The system is comprised of a plurality of lateral conduits 12 and vertical snorkel-shaped inlets 16 that allow admission of surface pavement fluid into the drainage network. (Col. 1, l. 62 - Col. 2., l. 2.)

Thus, unlike the claimed invention where the conduits have lengths substantially equal to

the length of the pad so that water drains through the conduits to escape beneath the pad, the Hargett "vertical conduits" extend only from the upper surface of the pavement to join the lateral conduits that are within the body of the pad. As a result, the water in Hargett does not escape beneath the pad, but is directed through the lateral conduits to storm drains outside the pavement structure.

There is no teaching or suggestion in Hargett that would lead one skilled in the art to modify the Hargett system to provide conduits that extend from the top to the bottom of the pad so that water drains beneath the pad. In fact, the totality of the teaching of Hargett is of the desirability of directing the water through lateral conduits to storm drains at the side of the pavement, probably due to the large volume of water that must be rapidly removed for an airport runway.

The Stolz and Harbeke patents are cited only to show that it is known to cover the upper ends of conduits with removable caps. Rothberg is cited only to show that it is known to construct forms of thermoplastic polymers. Hasty, Narva, Goth and Szabo are cited only as showing pull tabs. Reyneveld is cited to show that it is known to use a perimeter form in pouring concrete. Neither of these secondary references alone or in combination with each other or with Hargett teach or suggest modification of Hargett in a manner that would meet the requirements of the amended claims.

The Federal Circuit has ruled on numerous occasions that a holding of "obviousness" requires some motivation, suggestion or teaching within the cited references that would lead one skilled in the art to modify the cited reference or references as claimed by applicant. See, for example, *In re Kotzab*, 217 F3d 1365, 55 USPQ2d 1313 (Fed Cir. 2000):

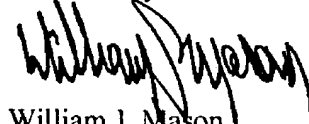
"Most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 149 F.3d

1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See *B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996)."

The required motivation, suggestion or teaching is not found in the cited references.

Accordingly, for the forgoing reasons, and in view of the amendments to the claims, it is believed that this application now defines a patentably distinguishable invention and is in condition for allowance. Such action is respectfully solicited.

Respectfully submitted,



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